

PLACIDO C. RAMOS AND AUGUSTO L. RAMOS, PETITIONERS, VS. PEPSI-COLA BOTTLING CO. OF THE P.I. AND ANDRES BONIFACIO, RESPONDENTS.

G.R. No. 22533, February 09, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On June 30, 1958 Placido and Augusto Ramos sued Pepsi-Cola Bottling Co. of the P.I.[1] and Andres Bonifacio in the Court of First Instance of Manila as a consequence of a collision, on May 10, 1958, involving the car of Placido Ramos and a tractor-truck and trailer of PEPSI-COLA. Said car was at the time of the collision driven by Augusto Ramos, son and co-plaintiff of Placido. PEPSI-COLA's tractor-truck was then driven by its driver and co-defendant Andres Bonifacio.

After trial, the Court of First Instance rendered judgment on April 15, 1961, finding Bonifacio negligent and declaring that PEPSI-COLA had not sufficiently proved its having exercised the due diligence of a good father of a family to prevent the damage. PEPSI-COLA and Bonifacio, solidarily, were ordered to pay the plaintiffs P2,638.50 actual damages; P2,000.00 moral damages; P2,000.00 as exemplary damages; and, P1,000.00 attorney's fees, with costs.

Not satisfied with this decision, the defendants appealed to the Court of Appeals.

Said Court, on January 15, 1964, affirmed the trial court's judgment insofar as it found defendant Bonifacio negligent, but modified it by absolving defendant PEPSI-COLA from liability, finding that, contrary to the plaintiffs' contention, PEPSI-COLA sufficiently proved due diligence in the selection of its driver Bonifacio.

Plaintiffs thereupon appealed to Us through this petition for review of the Court of Appeals' decision. And appellants would argue before this Court that defendant PEPSI-COLA's evidence failed to show that it had exercised due diligence in the selection of its driver in question.

Said point, as stated, was resolved by the Court of Appeals in PEPSI-COLA's favor, thus:

"The uncontradicted testimony of Juan T. Añasco, personnel manager of defendant company, was to the effect that defendant driver was first hired as a member of the bottle crop in the production department; that when he was hired as a driver, 'we had size [sic] him by looking into his background, asking him to submit clearances, previous experience, physical examination and later on, he was sent to the pool house to take the usual driver's examination; consisting of: 'First, theoretical examination and second, the practical driving examination,' all of which he had undergone, and that the defendant company was a member of the Safety Council. In view hereof, we are of the sense that defendant company had exercised the diligence of a good father of a family in the choice or selection of defendant driver. In the case of Campo vs. Camarote, G.R. No. L-9147 (1956), 53 O.G. 2794, cited in appellee's brief, our Supreme Court had occasion to put it down as a rule that 'In order that the defendant may be considered as having exercised all the diligence of a good father of a family, he should not have been satisfied with the mere possession of a professional driver's license; he should have carefully

examined the appli-cant for employment as to his qualifications, his experiences and record of service.' Defendant Company has taken all these steps."[2]

Appellants herein seek to assail the foregoing por-tion of the decision under review by taking issue with the testimony of Añasco upon which the findings of due diligence afore-stated are rested. Thus, it is now con-tended that Añasco, being PEPSI-COLA's employee, is a biased and interested witness; and that his testimony is not believable.

It is rather clear, therefore, that appellants would raise herein an issue of fact and credibility, something as to which this Court has consistently respected the findings of the Court of Appeals, with some few excep-tions, which do not obtain herein.[3]

Stated differently, Añasco's credibility is not for this Court now to re-examine. And said witness having been found credible by the Court of Appeals, his testi-mony, as accepted by said Court, cannot at this stage be assailed. As We said in *Co Tao v. Court of Appeals*, G.R. No. L--9194, April 25, 1957, assignments of error involving the credibility of witnesses and which in effect dispute the findings of fact of the Court of Appeals, cannot be re-viewed in these proceedings. For a question to be one of law it must involve no examination of the probative value of the evidence presented by the litigants or any of them.[4] And the distinction is well-known: There is a question of law in a given case when the doubt or dif-ference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.[5]

From all this it follows that for the purposes of this appeal, it must be taken as established that, as testified to by Añasco, PEPSI-COLA did in fact carefully examine the driver-applicant Bonifacio as to his quali-fications, experiences and record of service, taking all steps mentioned by the Court of Appeals in its decision already quoted.

Such being the case, there can be no doubt that PEPSI-COLA exercised the required due diligence in the selec-tion of its driver. As ruled by this Court in *Campo v. Camarote*, 53 O.G. 2794, 2797: "In order that the defen-dant may be considered as having exercised all diligence of a good father of a family, he should not be satisfied with the mere possession of a professional driver's license; he should have carefully examined the applicant for employment as to his qualifications, his experience and record of service."

It should perhaps be stated that in the instant case no question is raised as to due diligence in the supervi-sion by PEPSI-COLA of its driver. Article 2180 of the Ci-vil Code provides inter alia:

"x x x The owners and managers of an es-tablishment or enterprise are likewise res-ponsible for damages caused by their emplo-yees in the service of the branches in which the latter are employed or on the occasion of their functions.

x x x x

"The responsibility treated of in this Article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."

And construing a similar provision of the old Civil Code, this Court said in *Bahia v. Litonjua*, 30 Phil. 624, 627:

"From this article two things are appa-rent: (1) That when an injury is caused by the negligence of a servant or employee there instantly arises a presumption of law that there was negligence on the part of the mas-ter or employer either in the selection of the servant or employee, or in supervision over him after the selection, or both; and (2) that the presumption is juris tantum and not juris et de jure, and consequently may be rebutted. It follows necessarily that if the employer shows to the satisfaction of the court that in selection and supervision

he has exercised the care and diligence of a good father of a family, the presumption is overcome and he is relieved from liability."

As pointed out, what appellants here contend as not duly proved by PEPSI-COLA is only due diligence in the selection of its driver. And, parenthetically, it is not surprising that appellants thus confine their arguments to this aspect of due diligence, since the record - as even appellants' brief (pp. 13-17) reflects in quoting in part the testimony of PEPSI-COLA's witness - would show sufficient evidence to establish due diligence in the supervision by PEPSI-COLA of its drivers, including Bonifacio.

Appellants' other assignment of errors are likewise outside the purview of this Court's reviewing power. Thus, the question of whether PEPSI-COLA violated the Revised Motor Vehicle Law and rules and regulations related thereto, not having been raised and argued in the Court of Appeals, cannot be ventilated herein for the first time.[6] And the matter of whether or not PEPSI-COLA did acts to ratify the negligent act of its driver is a factual issue not proper herein.

WHEREFORE, the decision of the Court of Appeals is hereby affirmed, with costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] For brevity hereinafter called PEPSI-COLA.

[2] Underscoring supplied.

[3] Among the exceptions to the rule that findings of fact by the Court of Appeals cannot be reviewed on appeals by certiorari are:

1. When the conclusion is a finding grounded entirely on speculation, surmises or conjectures: *Joaquin vs. Navarro*, 93 Phil. 257.
2. When the inference made is manifestly mistaken, absurd or impossible: *Luna vs. Linatok*, 74 Phil. 15.
3. Where there is a grave abuse of discretion: *Buyco vs. People*, 51 O.G. 2927.
4. When the judgment is based on a misapprehension of facts: *Cruz vs. Sosing*, G.R. No. L-4875, November 27, 1953.
5. When the findings of fact are conflicting: *Casi-ca vs. Villaseca*, G.R. No. L-9590, April 30, 1957.
6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee: *Evangalista vs. Alto Surety & Insurance Co.*, G.R. No. L-11139, April 23, 1958.

[4] Cf. II Moran, COMMENTS ON THE RULES OF COURT, 1963 Ed., 412.

[5] See II Martin, RULES OF COURT IN THE PHILIPPINES, 255; II Bouvier's LAW DICTIONARY, 2784.

[6] *Tan Si Kiok v. Tiacho*, 79 Phil. 696.

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